IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 717 of 2007(I)

CMP.4878/2004 of C.J.M.PATHANAMTHITTA

.....

PETITIONER:

M.D.GOPALAKRISHNAN, S/O. DAMODARAN,
AGED 63 YEARS, "ASWATHI",
P.O.VALLIKODE, PATHANAMTHITTA.

BY ADV. SRI.V.SANTHARAM
SMT.SHIJA VARGHESE
SRI.ANTO THOMAS

RESPONDENTS:

---

1. M.K. DIVAKARAN,(MANAGING PARTNER,
ESSEN BANKERS, PATHANAMTHITTA), MINI SADANAM,
KANNANKARA, PATHANAMTHITTA.

2. M.S.BHASKARAN, (PARTNER, ESSEN BANKERS,
PATHANAMTHITTA) MEPPURATH VEEDU, MELUKARA,
KOZHENCHERRY.

3. K.M.SUKUMARAN, (PARTNER, ESSEN BANKERS,
PATHANAMTHITTA) PUTHENPURAYIL, (BHARGAVI MANDIRAM)
EDAPPARIYARAM P.O. ILLANTHUR.

4. SOUDHAMINI DIVAKARAN, (PARTNER,
ESSEN BANKERS, PATHANAMTHITTA)
MINI SADANAM, KANNANKARA,
PATHANAMTHITTA.

5. OMANA SOMAN, (PARTNER,
ESSEN BANKERS, PATHANAMTHITTA), SINI PRINTERS,
KANNANKARA, PATHANAMTHITTA.

6. K.KAMALA BHAI, (PARTNER, ESSEN BANKERS,
PATHANAMTHITTA) PALAM THALAKKAL, AZHUR,
PATHANAMTHITTA.

7. JINU V.RAJ, (PARTNER, ESSEN BANKERS,
PTHANAMTHITTA) PALAM THALAKKAL, AZHUR,
PATHANAMTHITTA.

8. AJEESH CHANDRAN, KALARTHUTHIYIL VEEDU,
NALLOOR MURI, MALAYALAPPUZHA VILLAGE.

9. RAJESH KUMAR E.G., ELAYINETH VEEDU,
THAZHAM P.O. MALAYALAPPUZHA.

10. HARIKUMAR N.G., NANTHIYADU VEEDU,
THAZHAM P.O. MALAYALAPPUZHA.

11. RANJITH KUMAR A.R. "ANEESH BHAVANAM",
THAZHAM P.O. MALAYALAPPUZHA.

12. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
(CRIME NO. 797/03 DT. 29.12.03 PATHANAMTHITTA
POLICE STATION).

13. DISTRICT SUPERINTENDENT OF POLICE,
PATHANAMTHITTA.

14. CIRCLE INSPECTOR OF POLICE,
PATHANAMTHITTA.

BY GOVERNMENT PLEADER SRI. SU NAZER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.717 OF 2007

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF COMPLAINT C.M.P.9804/03 FILED BY THE PETITIONER AGAINST RESPONDENTS 1 TO 11 BEFORE THE CHIEF JUDICIAL MAGISTRATE, PATHANAMTHITTA.

EXT.P2:- TRUE COPY OF THE REPORT DATED 30/3/2004 GIVEN BY THE SUB INSPECTOR OF POLICE, PATHANAMTHITTA BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA.

EXT.P3:- TRUE COPY OF THE CMP 4878/04 DATED 19/8/2004 FILED BY THE PETITIONER BEFORE CHIEF JUDICIAL MAGISTRATE, PATHANAMTHITTA.

EXT.P4:- TRUE COPY OF ORDER DATED 23/8/2004 PASSED BY THE CHIEF JUDICIAL MAGISTRATE, PATHANAMTHITTA, DIRECTING FURTHER INVESTIGATION.

EXT.P5:_ TRUE COPY OF JUDGMENT DATED 10/10/2003 IN CC 4/02 PASSED BY CHIEF JUDICIAL MAGISTRATE, PATHANAMTHITTA.

EXT.P6:- TRUE COPY OF REPRESENTATION DATED 22/8/2006 ALONG WITH THE RECEIPT SUBMITTED BY THE PETITIONER BEFORE THE 13TH RESPONDENT.

[TRUE COPY]

R.BASANT, J

W.P.C.No.717 of 2007

Dated this the 1st day of February 2007

JUDGMENT

The petitioner is the defacto complainant and he had filed a complaint before the learned Chief Judicial Magistrate Pathanamthitta alleging commission of offences punishable interalia under Sections 420,406 and 468 I.P.C against eleven persons. The learned Chief Judicial Magistrate forwarded the complaint to the police under Section 156(3) Cr.P.C. After conducting the investigation, a negative final report was filed by the investigating officer (a copy of which is produced as Ext.P2). Dissatisfied with the investigation conducted and the final report filed, the petitioner filed a protest complaint, Ext.P3. In that complaint, it was prayed that a comprehensive further investigation may be directed to be conducted in Crime No.797/03 registered on the basis of Ext.P1.

2. The learned Magistrate, by the order dated 28/08/2004 (copy of which is produced as Ext.P4) directed that further investigation be conducted. It is the grievance of the petitioner that inspite of the order passed by the learned Chief

Judicial Magistrate, no steps have been taken by the investigating officer to conduct any further investigation. Dissatisfied, the petitioner has come before this court for issue of directions to the investigating officer. It is alternatively prayed that in the interests of a proper, efficient and expeditious further investigation, the investigation may be entrusted to the Crime Branch CID.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor, after taking instructions, has got a statement filed by the Circle Inspector of Police, Pathanamthitta. It is said to be filed in the office. A copy of the same has been made available to the learned counsel for the petitioner. I have perused the same.

4. In such statement, the Circle Inspector of Police asserts that he had no information of such an order passed for further investigation under Section 173(8) Cr.P.C. This writ petition was filed only on 05/01/2007 and the statement shows that even earlier, the Circle Inspector of Police was aware of the direction for further investigation. He had applied for the copy of the order Ext.P4 as early as on 02/09/2006, it is evident. Thus

long prior to the filing of the petition on 05/01/2007, the Circle Inspector of Police appears to have been aware of Ext.P4 order passed by the learned Magistrate. No action has so far been taken in the matter.

5. I have no hesitation to agree with the learned counsel for the petitioner that a further investigation deserves to be conducted as directed in Ext.P4 order, as expeditiously as possible. In the nature of the action taken by the police so far, I am satisfied that the petitioner is justified in complaining about the inadequate and improper steps taken by the investigating officer. The fourteenth respondent, the Circle Inspector of Police undertakes to conduct a proper investigation. But I am not satisfied with that undertaking. Considering the sequence of events in this case and considering the nature of the contentions raised by the fourteenth respondent, I am satisfied that this petition can be allowed and appropriate further directions can be issued.

6. This writ petition is allowed and the following directions are issued:

(i) The police shall comply with Ext.P4 direction dated 23/08/2004 issued by the learned Chief Judicial Magistrate expeditiously.

ii) The thirteenth respondent shall ensure that further investigation is conducted by a competent and efficient police officer not below the rank of a Deputy Superintendent of Police.

Iii) Necessary directions in this regard shall be issued by the thirteenth respondent within a period of thirty days. Action taken shall be reported to the petitioner and to this court.

6. The learned Public Prosecutor shall convey this direction to the thirteenth respondent.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006